

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK  
-----x  
UNITED STATES OF AMERICA,

19-MJ-63

vs.

SHANE GUAY,  
Defendant.

Buffalo, New York  
April 17, 2019

-----x  
**INITIAL APPEARANCE AND DETENTION HEARING**

DIGITALLY-RECORDED TRANSCRIPT OF PROCEEDINGS  
BEFORE MAGISTRATE JUDGE JEREMIAH J. MCCARTHY  
UNITED STATES MAGISTRATE JUDGE

JAMES P. KENNEDY JR., ESQ.  
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FOR DEFENDANT: MARIANNE MARIANO, ESQ.  
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ALSO PRESENT: Ashley McNeal, U.S. Probation Office

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## P R O C E E D I N G S

\* \* \*

4 (WHEREUPON, the defendant is present.)

**THE CLERK:** For the record, this is United States  
versus Shane Guay, case number 19-MJ-63.

7 For the government, Jeremy Murry. For the  
8 defendant, from the Federal Public Defender's Office for  
9 possible assignment, Jeffrey Bagley. The defendant is  
10 present.

11                          Also present from U.S. Probation Office is  
12                          Ashley McNeal.

13 We are here for an initial appearance.

14 The Honorable Jeremiah J. McCarthy presiding.

15 And this is a sealed case.

16                   **MAGISTRATE JUDGE McCARTHY:** Is there a motion to  
17 unseal?

18                   **MR. MURRAY:** Yes, your Honor.

19 MAGISTRATE JUDGE McCARTHY: That motion is granted.

20 Mr. Guay, you are named in an amended criminal  
21 complaint dated today's date April 17th, 2019. Have you  
22 received a copy of that complaint and the supporting  
23 affidavit?

25 **MAGISTRATE JUDGE McCARTHY:** Mr. Murray, would you

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1 briefly summarize the charges and the potential penalties.

2                   **MR. MURRAY:** Yes, your Honor. On or about  
3 November 6th, 2016, in the County of Cattaraugus in the  
4 Western District of New York, the defendant did knowingly  
5 employ, use, persuade, entice and coerce a minor who was  
6 under the age of 18 years, to engage in sexually explicit  
7 conduct as defined in Title 18, United States Code, Section  
8 2256(2), for the purpose of producing visual depictions of  
9 such conduct using materials that had been mailed, shipped  
10 and transported in and effecting interstate and foreign  
11 commerce by any means, including by computer, and the visual  
12 depictions were transported and transmitted using any means  
13 and facility of interstate and foreign commerce, all in  
14 violation of Title 18, United States Code, Section 2251(a)  
15 and 2251(e), which carries a minimum of 15 years in prison, a  
16 maximum of 30 years in prison, a max fine of \$250,000 and a  
17 period of supervised release of 5 years and up to life.

18                   On or about April 2nd, 2017, in the Western  
19 District of New York, the defendant did knowingly receive  
20 child pornography, as defined in Title 18, United States  
21 Code, Section 2256(8), that had been shipped and transported  
22 using any means and facility of interstate and foreign  
23 commerce and had been shipped and transported in and  
24 affecting interstate and foreign commerce by any means,  
25 including by computer, in violation of Title 18, United

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1 States Code, section 2252A(a)(2)(A) and 2252A(b)(1) which  
2 carries a minimum of 5 years in prison, a maximum of 20 years  
3 in prison, a max fine of \$250,000 and post-release  
4 supervision of at least 5 years and up to life.

5 On or about June 5th, 2018, in the Western District  
6 of New York the defendant did knowingly possess child  
7 pornography as defined in Title 18, United States Code,  
8 Section 2256(8), in violation of Title 18, United States  
9 Code, Section 2252A(a)(5)(B) which carries a maximum of 10  
10 years in prison, a max fine of \$250,000, and post-release  
11 supervision of at least 5 years and up to life.

12 **MAGISTRATE JUDGE McCARTHY:** Thank you.

13 Sir, you have the right to remain silent. Anything  
14 that you say may be used against you. You have the right to  
15 be represented by an attorney. If you cannot afford an  
16 attorney, one will be appointed for you.

17 Are you asking for appointment of an attorney?

18 **THE DEFENDANT:** Yes.

19 **MAGISTRATE JUDGE McCARTHY:** Would you raise your  
20 right hand, please.

21 (**WHEREUPON**, the defendant was duly sworn.)

22 **MAGISTRATE JUDGE McCARTHY:** You may put your hand  
23 down. Could you speak up a little bit please.

24 I have before me a financial affidavit dated  
25 today's date.

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1 Is that your signature on the affidavit?

2 **THE DEFENDANT:** Yes.

3 **MAGISTRATE JUDGE McCARTHY:** Is the information  
4 complete and accurate?

5 **THE DEFENDANT:** Yes.

6 **MAGISTRATE JUDGE McCARTHY:** That indicates you're  
7 not currently employed and that you receive -- what is this  
8 public assistance and food stamps?

9 **THE DEFENDANT:** (No audible response.)

10 **MAGISTRATE JUDGE McCARTHY:** And that you have a  
11 small bank account but otherwise no income and no property,  
12 correct?

13 **THE DEFENDANT:** Yes.

14 **MAGISTRATE JUDGE McCARTHY:** And based on your  
15 statements, I find that you are eligible for appointment of  
16 counsel.

17 I'll ask Mr. Bagley of the federal public  
18 defender's office to represent you.

19 **MR. BAGLEY:** Yes, Judge, I accept. Thank you.

20 **MAGISTRATE JUDGE McCARTHY:** Thank you.

21 The defendant is also entitled to a preliminary  
22 hearing to determine whether the charges of the complaint are  
23 supported by probable cause.

24 Do you wish to have that hearing?

25 **MR. BAGLEY:** No, Judge.

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1                   **MAGISTRATE JUDGE McCARTHY:** All right. Mr. Murray,  
2 what is the government's position on detention or release?

3                   **MR. MURRAY:** Your Honor, the government  
4 respectfully requests the defendant be detained. We would be  
5 proceeding under 18, U.S.C., 3142(f)(1)(E), felony involving  
6 a minor victim, rebuttable presumption under 18 U.S.C.  
7 3142(e)(3)(E), since the defendant is charged with an offense  
8 involving a minor victim under 2251(a) and 2252A(a)(2), and  
9 also be moving under 3142(f)(2)(A), risk of flight. And the  
10 factors under 18, U.S.C., 3142(g) revealed that the defendant  
11 is a flight risk and a danger to the community.

12                  It's the government's position that there are no  
13 conditions or combination of conditions that would reasonably  
14 assure the defendant's appearance as required. And the  
15 government can go forward with a detention hearing today and  
16 set out in more detail those 3142(g) factors.

17                  **MAGISTRATE JUDGE McCARTHY:** Well, let me ask -- and  
18 do you wish to proceed today or do you --

19                  **MR. BAGLEY:** Yes, Judge, I have spoken to Mr. Guay  
20 and we're prepared to move forward today.

21                  **MAGISTRATE JUDGE McCARTHY:** We don't have a --  
22 Ms. McNeal, do you have a verbal report?

23                  **PROBATION OFFICER McNEAL:** Your Honor, yes, I can  
24 provide a verbal report to the Court.

25                  **MAGISTRATE JUDGE McCARTHY:** Well --

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1                   **PROBATION OFFICER McNEAL:** The information has not  
2 yet been verified.

3                   **MAGISTRATE JUDGE McCARTHY:** Let me hear first from  
4 Mr. Murray.

5                   **MR. MURRAY:** Yes, your Honor.

6                   **MAGISTRATE JUDGE McCARTHY:** Let me ask you  
7 preliminarily, Mr. Murray, there was a search as last August,  
8 right?

9                   **MR. MURRAY:** It was a search warrant last June,  
10 your Honor, June of 2018.

11                  **MAGISTRATE JUDGE McCARTHY:** Okay. So what's been  
12 happening in the meanwhile?

13                  **MR. MURRAY:** Yes, your Honor. So, after the search  
14 warrant took place in June of 2018, HSI agents went to  
15 Massachusetts in September of 2018 to review the  
16 investigation and case files and also meet with some of the  
17 victims in this case.

18                  We identified Instagram messages where the  
19 defendant requested and received child pornography from minor  
20 female victims and sum -- additional summons were sent to  
21 these Instagram customers to try to identify these  
22 individuals.

23                  In February of 2019 we tracked one of the  
24 victims -- and this is for the production charges. In  
25 February of 2019 we tracked one of the victims to Cape Town,

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1 south Africa. And in late February of 2019 -- and I believe  
2 that it's discussed in the affidavit -- but when the minor  
3 victim was interviewed in South Africa, she admitted the  
4 defendant requested and actually sent naked photos of herself  
5 to the defendant.

6 **MAGISTRATE JUDGE McCARTHY:** Now, in Paragraph 22 of  
7 the affidavit it says on June 5th, 2018 -- almost a year  
8 ago -- the defendant essentially admitted to almost  
9 everything. So, why are we only getting a complaint now?

10 **MR. MURRAY:** Your Honor, and I understand your  
11 Honor's concern.

12 **MAGISTRATE JUDGE McCARTHY:** Thank you.

13 **MR. MURRAY:** The -- so the investigation is far  
14 reaching. So there were victims who were in Massachusetts,  
15 and Georgia --

16 **MAGISTRATE JUDGE McCARTHY:** Yeah, understood. But  
17 if you're asking that he be detained as a risk of danger or  
18 flight, I mean, he knew as of almost a year ago that he was,  
19 I presume he knew he was in trouble.

20 **MR. MURRAY:** And, your Honor --

21 **MAGISTRATE JUDGE McCARTHY:** And he --

22 **MR. MURRAY:** I agree with you. We also, just to  
23 corroborate and verify that these victims were, in fact, the  
24 victims associated with production of child pornography, we  
25 had forensic interviews that were conducted in February of

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1 2019 and April of 2019. We wanted to conduct a full  
2 investigation before we brought these charges. We didn't  
3 want to charge the defendant, for instance, and then continue  
4 the investigation for over a year, engage in multiple  
5 superseding indictments --

6 **MAGISTRATE JUDGE McCARTHY:** Yeah, I understand all  
7 that as a prosecution strategy. But what is very difficult  
8 for me to understand is how you can now claim that he's a  
9 danger to the community when you've left him out there for  
10 almost a year.

11 **MR. MURRAY:** I understand, your Honor, and I think  
12 the argument from the government is that now we've actually  
13 confirmed from forensically interviewing these victims that  
14 this did, in fact, take place. So, unfortunately --

15 **MAGISTRATE JUDGE McCARTHY:** He admitted it took  
16 place.

17 **MR. MURRAY:** He admitted that he exchanged images  
18 back and forth with minor victims and then we had to pin down  
19 who these minor victims were and also take statements from  
20 them to establish that that, in fact, did take place.

21 **MAGISTRATE JUDGE McCARTHY:** Okay.

22 **MR. MURRAY:** So, unfortunately, on one side of the  
23 fence, you know, if we charged this back in June, potentially  
24 we could be running up speedy trial issues here but  
25 obviously --

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1                   **MAGISTRATE JUDGE McCARTHY:** No, I understand all  
2 that. I'm just saying that it really undercuts your  
3 position -- in my estimation, it really undercuts your  
4 position that he's either a risk of flight or danger to the  
5 community.

6                   I'm not talking about guilt or innocence or  
7 anything of that sort. That's not for me to determine. I'm  
8 just talking about the factors. I'll grant you the evidence  
9 appears very strong but he's known for almost a year that  
10 he's in trouble and apparently hasn't gone anywhere.

11                  **MR. MURRAY:** I understand, your Honor. And I guess  
12 I just want to emphasize that once the investigation was  
13 complete, we got a charge -- we charged, we got a criminal  
14 complaint signed approximately six days later. So,  
15 unfortunately it's a double-edged sword.

16                  **MAGISTRATE JUDGE McCARTHY:** On April 11th of this  
17 year.

18                  **MR. MURRAY:** Yes.

19                  **MAGISTRATE JUDGE McCARTHY:** Yeah.

20                  **MR. MURRAY:** So, unfortunately, it's a double-edged  
21 sword because you want to conduct a full investigation  
22 before you charge the defendant by way of complaint.

23                  On the other hand, I foresaw this issue bringing  
24 the defendant in for a detention hearing because the other  
25 issue is that there could be problems with arguing with

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1 detention but that's, that's the position that --

2 **MAGISTRATE JUDGE McCARTHY:** Okay.

3 **MR. MURRAY:** -- that we took.

4 **MAGISTRATE JUDGE McCARTHY:** Okay. That's fair  
5 enough. I think I've heard your position.

6 Ms. McNeal, I'll hear from you and then I'll  
7 hear --

8 **MR. MURRAY:** Oh.

9 **MAGISTRATE JUDGE McCARTHY:** -- from Mr. Bagley.

10 What?

11 **MR. MURRAY:** Your Honor, I was going to go through  
12 the various factors under 3142(g).

13 **MAGISTRATE JUDGE McCARTHY:** I think I understand  
14 the factors. Again, I see what's in the affidavit. I  
15 haven't seen any report. I'll hear from Ms. McNeal as to  
16 what she has to tell me about her interview and his  
17 background, et cetera.

18 I understand your position. I'm not quarreling  
19 with your position from a prosecution strategy. I'm just  
20 saying that in light of that, I think you have an uphill  
21 battle, notwithstanding the presumption, if there is one, you  
22 have an uphill battle in showing me that, if released, he  
23 will pose a risk of flight or danger to the community. I  
24 want to hear about conditions. If you want to go through all  
25 the factors, go ahead.

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1           **MR. MURRAY:** Thank you, your Honor.

2           Turning to the factors to be considered for  
3 detention pursuant to 18 U.S.C. 3142(g).

4           Looking at the first factor: The nature and the  
5 circumstances of the offense charged. The defendant is  
6 charged with production of child pornography, receipt of  
7 child pornography, as well as possession of child  
8 pornography. And a description of that child pornography  
9 which is produced at the defendant's behest -- and a  
10 description of the child pornography that he received and  
11 possessed is found in the complaint. It's alleged the  
12 defendant produced this by requesting naked photos from  
13 prepubescent females.

14           The production count that's actually charged in the  
15 criminal complaint involves the defendant requesting to see a  
16 minor 12-year-old victim's genitalia which she thereafter  
17 sent to the defendant. So the defendant's not just viewing  
18 this but he's also creating this.

19           Additionally, the defendant communicated with minor  
20 females in Georgia, Massachusetts, South Africa and even  
21 minors as far reaching as Germany, New Zealand and England;  
22 chatted with approximately 37 different Instagram accounts  
23 involving alleged minor females, some of which he requested  
24 child pornography, some of which he engaged in sexual chat  
25 and some of which he sent photos of his genitalia to these

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1 young girls.

2 As detailed in the complaint, when requesting these  
3 naked photos from the minor victims in Georgia, at one  
4 juncture, the defendant threatened to commit suicide if the  
5 images were not sent.

6 Forensic reports reveal the defendant had images  
7 and videos of child pornography on his electronics in the  
8 amount of 154 images and 5 videos.

9 And the nature and circumstances of this case  
10 clearly weigh in favor of detention, especially in light of  
11 the fact the defendant now is facing a mandatory minimum term  
12 of 15 years in prison if convicted of production of child  
13 pornography which would make him susceptible to flight.

14 Looking at the second factor: The weight of the  
15 evidence against the defendant. The weight of the evidence  
16 is quite strong. As far as the count for possession of child  
17 pornography is concerned, child pornography as just  
18 indicated, was, in fact, found on the defendant's  
19 electronics; in particular, he stated that he used an  
20 LG G4 (sic) cell phone to send and receive child pornography  
21 and 126 images and 1 video of child pornography was actually  
22 found on that particular device.

23 And when questioned about the Instagram  
24 conversations, as noted by your Honor previously, the  
25 defendant made a number of confessions saying obviously I did

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1 it. I'll admit it. I just don't personally remember it. I  
2 admit that but I don't remember every single thing. Also  
3 admitted to receiving nude images from minor females, the  
4 Instagram, admitted that he exchanged nude images with minor  
5 females which again corroborates the images and videos found  
6 on his devices.

7 And forensic interviews from two of these minor  
8 victims, one in Massachusetts and one in South Africa which  
9 were conducted in February of and April of this year, further  
10 confirms and corroborates that the defendant requested that  
11 these minor victims produce naked images of themselves and  
12 they did, in fact, produce it.

13 A forensic interview from one of the victims in  
14 Georgia further corroborates and confirms the defendant  
15 requested naked images from her. So we have an attempted  
16 production count there, as well.

17 And the Instagram chats further corroborate all of  
18 this.

19 So based on the review of the electronics where the  
20 child pornography was found, the Instagram conversations, the  
21 admissions from the defendant, and the statements from a  
22 number of these victims, the strong proof of these charges  
23 again weighs in favor of detention.

24 Looking at the third factor: The history and  
25 characteristics of the defendant. The defendant has been

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1 engaging in the collection and possession of child  
2 pornography for a significant period of time. This was not a  
3 one-time thing.

4                 The forensic evidence reveals that the 27-year-old  
5 defendant has been downloading and obtaining child  
6 pornography for most of his adult life. For instance, the  
7 create date for some of the images found on his electronic  
8 devices dates back to 2011, which means that he downloaded  
9 those images at around the time dating back to when he was 19  
10 years of age. In November of 2016, when the defendant was 24  
11 years of age or 25 years of age, the defendant was  
12 communicating in a sexual nature with a number of females --  
13 which is how he was developed as a suspect in this case --  
14 minor females in Massachusetts. Thereafter, he communicated  
15 with two 12-year-old females in Georgia. And based on,  
16 again, the Instagram search warrant, approximately 37  
17 different Instagram accounts of purported minor females the  
18 defendant engaged in conversations with.

19                 Additionally, he downloaded some of these images of  
20 child pornography on April 2nd, 2017, when he was 26 years  
21 old, the date of receipt in the complaint. And he possessed  
22 these on June 5th of 2018 at the age of 27.

23                 So, throughout the defendant's entire adult life,  
24 he has been engaged in obtaining and possessing child  
25 pornography and these factors further weigh in favor of

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1 detention.

2 And, finally, your Honor, turning to the nature and  
3 seriousness of the danger to any person in the community that  
4 would be posed by the defendant's release. Due to the  
5 defendant engaging in the production of child pornography and  
6 due to the defendant being found in possession of child  
7 pornography, the defendant is, in fact, an extreme danger to  
8 the community. And, again, at this juncture, there is no  
9 allegation that we know of of hands-on contact with any of  
10 the victims.

11 But here we have an individual who has produced  
12 child pornography at the expense of real victims which makes  
13 him an extreme danger if released, a danger to all children  
14 in the community. The defendant's crimes have been far  
15 reaching, affecting minors in Massachusetts, Georgia and  
16 South Africa.

17 It's also my understanding the defendant is a  
18 caregiver for his girlfriend's children for three days a  
19 week. Those children are 1, 2 and 4 years of age and with  
20 these allegations, it's also very concerning the defendant  
21 could have access to those kids.

22 **MAGISTRATE JUDGE McCARTHY:** Wait. All right. When  
23 did the government learn this?

24 **MR. MURRAY:** When did we find out about that, your  
25 Honor?

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1                   **MAGISTRATE JUDGE McCARTHY:** Yeah.

2                   **MR. MURRAY:** I got a phone call from the agent  
3 about an hour ago with that information.

4                   So, your Honor, there are, respectfully, no  
5 conditions or combination of conditions that would reasonably  
6 assure the defendant's appearance to face the charges that  
7 are currently pending against him and to protect the safety  
8 of the community.

9                   Thank you, your Honor.

10                  **MAGISTRATE JUDGE McCARTHY:** Okay. Ms. McNeal, can  
11 I hear from you before I hear from Mr. Bagley.

12                  **PROBATION OFFICER McNEAL:** Yes, your Honor.

13                  To give the Court a background on the defendant.  
14 He advised he was born Shane Michael Guay on May 4th, 1991,  
15 in Jamestown, New York. The defendant denied ownership or  
16 possession of any international travel documents. He also  
17 indicated that he has never left the United States. He  
18 advised that he has been residing at 147 North 8th Street in  
19 Olean, New York for approximately 21 years. He advised his  
20 mother rents this residence and he lives with his brother and  
21 his mother here.

22                  He advised that there are no weapons there. He  
23 acknowledged a previous residential history in New Hampshire  
24 from 1997 to 1998.

25                  He advised that he will return to his mother's

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1 residence at 147 North 8th street in Olean, New York if he is  
2 released by the Court. He advised that he maintains a  
3 positive relationship with his mother.

4 He has three siblings, one who resides with him,  
5 another who -- the other two reside in Pennsylvania. He  
6 noted positive relationships with all family members. He  
7 advised his father is deceased but prior to him passing away,  
8 their relationship was okay.

9 He indicated that he is single. He has never been  
10 married before. He has been in a relationship with Angel  
11 Lycedd who is 25 years old who lives in Portville, New York  
12 for nine months. He indicated that there is a positive  
13 relationship between him and Ms. Lycedd. He denied that he  
14 has any children but did acknowledge that Ms. Lycedd has  
15 three children, ages 4, 2 and 1.

16 He indicated he received his high school  
17 equivalency diploma in 2019 and he had completed, previous to  
18 that time, he had completed the tenth grade at Olean High  
19 School. He denied any military history. No vocational  
20 training. He denied any medical -- or -- yes, any medical  
21 history. He advised that he has never seen a counselor,  
22 psychiatrist, but he did have some thoughts of suicidal,  
23 suicidal thoughts back in high school. He denies any adult  
24 history of mental illness.

25 He indicates that he gambles approximately once per

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1 month at the Seneca Allegany Casino where he spends 20 to \$40  
2 at a time.

3 As it relates to the defendant's access to minors,  
4 he acknowledged that he does have access to his girlfriend's  
5 children who he recently applied for government assistance  
6 for providing child care. He acknowledged that he also has  
7 nieces and nephews but he has not seen them in several  
8 months. He denied volunteering anywhere. He indicated that  
9 his only electronic device was an LG G6 (sic) smart phone  
10 which was taken from him. He advised that's the only manner  
11 in which he accesses the internet. He indicated that there  
12 is access to internet at both his girlfriend's residence and  
13 his mother's residence provided through Spectrum and he  
14 indicated that there is a computer at his girlfriend's house  
15 but he does not use it.

16 He advised that he occasionally consumes alcohol  
17 one to two times per year. He advised of prior use of  
18 amphetamines during high school; marijuana from the age of 13  
19 to 23; powder cocaine during high school; and prescription  
20 opiates during high school. He indicated that he does not  
21 have any current use of substances and he has never received  
22 treatment.

23 The defendant indicated that he's not employed.  
24 There is no reason, mentally or physically, as to why he  
25 cannot work. He indicated that he has been providing child

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1 care for his girlfriend's children since January 14th, 2019.  
2 And as previously stated, he recently applied for government  
3 assistance to compensate him for that. He indicated  
4 previously he worked at Holiday Valley seasonally for  
5 approximately four years as a ski lift attendant. And he  
6 does not have any prior work history beyond that.

7 He indicated that he currently is financially  
8 supported by public assistance of which he receives \$362 a  
9 month. He indicated that his girlfriend, while unemployed,  
10 is a full-time student and she also receives public  
11 assistance and child support. He indicated that he  
12 contributes \$200 per month towards the household expenses at  
13 his mother's residence and his mother provides the remainder  
14 of the financial support. He indicated he has approximately  
15 \$30,000 in outstanding medical bills and, other than that, he  
16 does not have any other assets or liabilities.

17 He indicated that his mother might be willing to  
18 cosign a bond on his behalf and that his mother would be able  
19 to verify the information in this report, which at this time  
20 this information remains unverified, as I just interviewed  
21 the defendant prior to court this afternoon.

22 Based upon that information, your Honor, I --

23 **MAGISTRATE JUDGE McCARTHY:** Do you have a criminal  
24 history?

25 **PROBATION OFFICER McNEAL:** I do not have a criminal

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1 history for this defendant. I am being told the defendant  
2 does not have a criminal history.

3 However, based upon that information, your Honor,  
4 our recommendation would be detention until this information  
5 can be verified with his mother with whom he has indicated he  
6 would be residing. That would be very important.

7 If there were going to be conditions of release, at  
8 the very least they would be including GPS monitoring and we  
9 would like time to look at the defendant's residence to make  
10 sure it is suitable for that.

11 **MAGISTRATE JUDGE McCARTHY:** Okay.

12 **MR. BAGLEY:** Judge, I think you know my position.  
13 We had a strikingly similar case just yesterday. I'm not  
14 going to go through everything that you know that I am going  
15 to say.

16 What I am going to say, Judge, typically in these  
17 cases we're kind of making a guess as to whether the person  
18 sitting to my right is going to be coming back to court, is  
19 going to be a flight risk, is going to be a danger.

20 We basically have ten months where he's been  
21 released on his own recognizance. And there's been no  
22 evidence or suggestion that anything untoward has happened  
23 during those ten months. So we don't have to guess. We  
24 know. So it's even more clear in a case like this, Judge.

25 So I'd ask that you impose conditions that the

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1 Court finds reasonable.

2                 With respect to the minor children that he looks  
3 after, his girlfriend is sitting right behind me, Angel. I  
4 spoke with her just before this appearance and she remains  
5 supportive of him. I told her what the charges are. She  
6 still remains supportive of him. We would have no objection,  
7 however, to a condition that he's not allowed -- they're not  
8 his biological children -- therefore, we'd have no objection  
9 to a condition that he's not allowed to have any contact with  
10 them.

11                 Thank you.

12                 **MAGISTRATE JUDGE McCARTHY:** Is his mother present?

13                 **MR. BAGLEY:** She wasn't able to get here yet,  
14 Judge. I do have a phone number and we're trying to get in  
15 touch with her.

16                 **MAGISTRATE JUDGE McCARTHY:** All right. This is  
17 Judge Schroeder's case. It's not mine. I'm covering it for  
18 him. He will be back tomorrow. I'm going to suggest that,  
19 Debbie, do we -- is there a particular time that's?

20                 **THE CLERK:** Looking at tomorrow for Judge  
21 Schroeder?

22                 **MAGISTRATE JUDGE McCARTHY:** Yeah.

23                 **THE CLERK:** He has something at 2. I could do like  
24 1:30 or something like that or 2:30.

25                 **MR. MURRAY:** That will work for the government,

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1 your Honor.

2           **THE CLERK:** That's on the 18th. The 19th is open  
3 so I don't know.

4           **MR. BAGLEY:** That would be fine, 1:30.

5           **THE CLERK:** 1:30 on the 18th, which is tomorrow.

6           **MAGISTRATE JUDGE McCARTHY:** All right. It will be  
7 Judge Schroeder's determination. But since we've gone  
8 through this procedure, you should feel free to tell him that  
9 my reaction of this, which is, again, I do not fault the  
10 government for their prosecution strategy but I think the  
11 delay in bringing him to this court severely undercuts their  
12 argument that he would be either a risk of flight or danger  
13 to the community if released on conditions. He's known since  
14 June 5th of last year when he allegedly gave the statements  
15 and, clearly, when the search of the house took place, he's  
16 known that of at least a strong potential for criminal  
17 consequences and apparently he has not fled and he has not  
18 gone anywhere.

19           Having said that, I -- he's facing very serious  
20 charges. I would be inclined to recommend release on home  
21 incarceration to live with his mother, to have no contact  
22 whatsoever with any minor children, to have his mother sign a  
23 \$50,000 signature bond, to be placed under GPS monitoring or  
24 electronic monitoring as probation sees fit, and then the  
25 other standard conditions of release with respect to child

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1 porn cases.

2 Having said that all, and I will let Judge  
3 Schroeder know my thoughts but those would be my  
4 recommendations but it will be up to him.

5 And, obviously, Ms. McNeal, you need the  
6 opportunity to verify the information with his mother and I  
7 think she should be here tomorrow if Judge Schroeder's going  
8 to grant release on those or similar conditions but that will  
9 really be up to him. Okay.

10 **MR. MURRAY:** Thank you, your Honor.

11 **MAGISTRATE JUDGE McCARTHY:** So we'll continue the  
12 hearing until tomorrow for further proceeding before Judge  
13 Schroeder. And defendant will be remanded.

14 And given that the government's motion for  
15 detention remains pending, time's excluded between today and  
16 tomorrow from the Speedy Trial Act calendar.

17 **MR. MURRAY:** Thank you, your Honor.

18 (**WHEREUPON**, proceedings were adjourned.)

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**CERTIFICATE OF TRANSCRIBER**

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6           In accordance with 28, U.S.C., 753(b), I  
7 certify that this is a true and correct record of proceedings  
8 from the official electronic sound recording of the  
9 proceedings held in the United States District Court  
10 for the Western District of New York before  
11 Magistrate Jeremiah J. McCarthy on April 17, 2019.

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S/ Diane S. Martens

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Diane S. Martens

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